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Federal Communications Commission
Consumer & Governmental Affairs Bureau
Washington, D C. 20554

CGB

SEP 5 2003

Control No 0302395-Pol

The Honorable David Vitter
U S House of Representatives
414 Cannon Building Office Building
Washington, D C. 20515

REC

SEP 11 2003

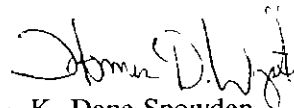
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CGB

Dear Congressman Vitter.

Thank you for your August 9, 2003, facsimile transmission on behalf of your constituent, Randal J Robert with Kantrow, Spaht, Weaver & Blitzer, regarding his letter dated August 7, 2003, to the Federal Communications Commission, Enforcement Bureau. My office has been in contact with the Enforcement Bureau and a Commission staff member has already contacted, or will soon contact, Mr Robert directly concerning the facsimile transmission issues he raises in his letter.

Please do not hesitate to contact me if I can be of further assistance

Sincerely,


For K Dane Snowden

Chief

Consumer & Governmental Affairs Bureau

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CONGRESSMAN
David Vitter

CEB
TCPA
2395

Fax Transmittal

To Jill Pender

From: Chris Stanley

FCC

Fax Number 418-2806

8/9/2003

Number of Pages
Including Cover 4

Message Thanks for your help in passing this on to the right person in your office. We appreciate your help very much. Anything we can find out about the situation would be very helpful.

Washington D.C. Office
414 Cannon Building
Washington, DC 20515
(202) 225-3015
Fax (202) 225-0739

Southshore Office
2800 Veterans Blvd
Suite 201
Metairie, LA 70002
(504) 589-2753
Fax (504) 589-2607

Northshore Office
300 Thomas Street
Hammond, LA 70401
(985) 542-9616
Toll Free (800) 851-3973
Fax (985) 542-9577

www.house.gov/vitter

david.vitter@mail.house.gov

If you received this fax in error, please notify us by telephone so that we may arrange for the return of the documents

AUG 2003 RCUD

KANTROW, SPAHT, WEAVER & BLITZER

(A PROFESSIONAL LAW CORPORATION)

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August 7, 2003

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Federal Communications Commission
Enforcement Bureau
445 Twelfth Street, SW
Washington, D.C. 20554

Re: Question Regarding Applicability of the Telephone Consumer
Protection Act, 47 U.S.C. § 227, To Certain Facsimile Transmittals

Ladies and Gentlemen:

Our firm represents several clients that market and sell insurance products. From time to time, we receive inquiries from our clients regarding their marketing and sales activities which require an interpretation of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227. We currently have a question regarding the applicability, if any, of the provisions of the TCPA which impose restrictions on facsimile transmissions with respect to the activities of one of our clients. As we have located no regulations promulgated by the Federal Communications Commission ("FCC") or federal decisions which specifically address this question, we are writing to you for guidance in this area. We would greatly appreciate your advising us of your views with respect to our question.

Question: Will an insurance company's use of facsimile messages to be transmitted to insurance agents, which encourage or recruit these insurance agents to market or sell insurance products of the insurance company to third party insurance consumers, violate the TCPA? The facsimile messages would provide information about the insurance company's products and would invite the insurance agents to market or sell those products to consumers on a commission basis. The facsimile messages would not encourage the recipient, i.e. the insurance agent, to purchase, rent or invest in any property, goods or services. In fact, the messages are the opposite of a sale because recipient insurance agents who elect to market the policies are paid a commission by the insurance company.

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Each facsimile message would include the following legend to be displayed in a prominent location on the document

ATTENTION RECIPIENT

This message is not an advertisement or solicitation requesting or suggesting you purchase, rent or invest in any property, goods or services. It is to provide you, as an insurance agent, with informational and educational materials about insurance underwritten or administered by [name of insurance company] which you may sell or market to insurance consumers on a commission basis. If you do not want these messages in the future, please advise us, and we will remove you from our list:

Telephone: _____
Fax to: _____
E-mail to: _____

Thus, the transmissions would be a type of "help wanted" message seeking insurance agents to help market and sell insurance products on a commission basis.

Our review of the TCPA and corresponding administrative regulations indicates that they prohibit the use of "any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine." 47 U.S.C. § 227(b)(1)(c); 47 C.F.R. 64.1200(a)(3). The term "unsolicited advertisement" is defined as "any material advertising the commercial availability or quality of any property, goods or services which is transmitted to any person without that person's prior express invitation or permission." 47 U.S.C. § 227(a)(1)(B)(4); 47 C.F.R. 64.1200(f)(5). While we recognize that the prohibition on fax advertising is broad, our research indicates that certain types of "help wanted" messages do not violate the TCPA. In Lutz Appellate Services v. Curry, 859 F.Supp. 180 (E.D. Pa. 1994), a federal district court held that the solicitation of employees with job opportunities was not an advertisement for "property, goods or services" and was not prohibited by the TCPA.

In light of the Lutz case, we would appreciate the FCC's views on the question noted above, i.e., Does a facsimile message by an insurance company, which encourages or solicits recipient insurance agents to market or sell the insurance company's products to third party consumers, violate the TCPA? We note that in the FCC's "Notice of Proposed Rulemaking and Memorandum Opinion and Order" dated September 18, 2002, CG Docket No. 02-278, FCC 02-250, 17 F.C.C.R. 17459, your agency invited comment about calls seeking people to help sell or market a business' products (a kind of "help wanted" message). 17 F.C.C.R. 17459, 17478 at para. 31. It was also specifically

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noted that an "example of a 'help wanted' call might include a message from an insurance company recruiting agents to help sell insurance policies". 17 F.C.C.R. 17459, 17478, at para 31, N. 120. Additionally, we note that the FCC's "Report and Order" dated July 3, 2003, CG Docket No. 02-278, FCC 03-153, 2003 WL 21517853, also discusses the issue. The Report and Order states that "a message that seeks people to help sell or market a business' products, constitutes an advertisement if the individuals called are encouraged to purchase, rent or invest in property, goods, or services, during or after the call." Report and Order dated July 3, 2003, at para. 142.

The recent FCC Report and Order indicates that our client's proposed facsimile transmissions would not violate the TCPA because the messages do not encourage the insurance agents, who receive the messages, to purchase, rent or invest in property, goods, or services. The faxes would simply advise the insurance agents of insurance products that they may elect to sell to consumers on a commission basis. However, we note that the recent Report and Order addresses this issue in Section IX which deals with "Artificial or Prerecorded Voice Messages". Thus, we question whether the FCC's conclusions in this area would also apply to facsimile messages. We would appreciate it if you could clarify this matter for us.

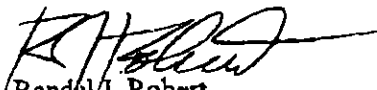
We thank you for your time and attention and are hopeful that you will be able to assist us in the proper interpretation of what we believe is an important issue under the TCPA. If you have any questions or need additional information, please do not hesitate to contact us at your convenience.

With kind regards, we remain

Sincerely yours,

KANTROW, SPAHT, WEAVER & BLITZER
(A PROFESSIONAL LAW CORPORATION)

By:


Randal J. Robert

RJR:bcc

RECEIVED TIME AUG 11 5 08PM

PRINT TIME AUG. 11 5:11PM